

**Town of Milton
Planning & Zoning Meeting
Milton Library, 121 Union Street
Tuesday, May 21, 2013
6:30 pm**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order

2. Roll Call of Members

Mark Quigley	Present
Barry Goodinson	Present
Bob Heinrich	Present
Lynn Ekelund	Present
Linda Edelen	Present
Don Mazzeo	Present
Tim Nicholson	Absent

3. Additions/Corrections to the Agenda

Don Mazzeo: Do we have any additions or corrections to the Agenda as it has been posted?

4. Approval of agenda

Don Mazzeo: Seeing none I'll accept a motion to approve.

Lynn Ekelund: Move to approve the Agenda.

Linda Edelin: So moved.

Don Mazzeo: All in favor say aye. Opposed. Agenda has been approved.

5. Approval of minutes of April 16, 2013

Don Mazzeo: Approval of minutes from April 16, 2013. Do I have any additions, corrections, deletions to those minutes?

Bob Heinrich: I have three Mr. Chairman. As you know, I read these minutes all the time. I always find the typos. Page 4.

Don Mazzeo: Recognize that these are taken from a tape.

Bob Heinrich: I understand.

Don Mazzeo: So it may not be a real typo.

Bob Heinrich: I think it was the date should be 1890 and Barry Goodinson remark about his house was built in 1890. Perhaps it is. I don't know. Buy I was just questioning that.

Barry Goodinson: No, it's true.

Bob Heinrich: Okay. Okay. Then that's okay. Page 16, "If I owned that piece or

property”, Bob Heinrich. Piece of property. I guess if I owned that piece of property, I'd worry about what happened behind it, to the water going through there in Habitat. My third comment on Page 16. I have one more. Page 23, Seth Thompson, that certainly makes sense, if there's a whole in your Code.

Don Mazzeo: Yes, I saw that. Should be hole. Did I hear another?

Barry Goodinson: Yes, on Page 14, it says where the wetlands and it says Red Carrion... I think it's riparian. I don't believe I was talking about red carcasses. It should be riparian.

Don Mazzeo: Okay, any other corrections, additions or deletions to the minutes of April 16th? Hearing none, I'll entertain a motion to accept the minutes.

Bob Heinrich: So moved.

Lynn Ekelund: Second

Don Mazzeo: All in favor say aye. Opposed. Motion is carried.

6. Business – Discussion and possible vote on the following item:

a. **Final Subdivision Plan Review/Approval**

The applicant, Fernmoor Homes at Heritage Creek, is requesting a final subdivision review/approval for Phase 3 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00.

Don Mazzeo: For the record, for those folks that are in the audience, good evening. This is not a Public Hearing. This is a business meeting only. Do we have comments from the engineer on this particular request?

Bob Kerr, CABA Associates: Good evening. The applicant has submitted everything, all the construction drawings have been looked at and reviewed and are acceptable; pop plans have been submitted and are acceptable. Of note, is that they are doing it in four phases, so there's actually four sets of drawings for the record plan, so it kind of keeps going on and on. There's eight sheets altogether. The one thing, in doing the review that I would like to bring to your attention, is the lighting plan shows the lights much closer than the Code of the town requires. The Code requires 300', a minimum of 300' spacing and there's some other conditions at corners and around curves. This is much closer, Mayor and Council and kind of touched on this subject before. It was more of an issue, I believe, with the former Council; I haven't really heard what this one feels, but there was a feeling that maybe there's too much light in Heritage Creek and that the distance between should be closer to Code or something less. I don't know how you'd like to proceed; whether you punt it to Mayor and Council or want to discuss it and make a recommendation to Mayor and Council, but I did want to bring it to your attention.

Don Mazzeo: Thank you for that input on the lighting particularly. In one of our past hearings that topic was also discussed here at this Commission and I recall very distinctly and I do not have the gentleman's name, it's probably among my list here, but one of his comments was that he, as a resident there, actually

moved there because of the amount of lighting and enjoys the amount of lighting. I question only one item; who will be paying for that lighting, once it is a finished and fully approved...

Bob Kerr: Once accepted by the Town, the Town is responsible for payment of the lights and anything else dealing with the streets.

Don Mazzeo: So if we have an abundance of lights, there's an abundance of expense, on a straight line basis; notwithstanding that, again hearing from the public that was here one evening, they seemed to indicate that they liked the number of lights. Comments from the Commission?

Mark Quigley: I just have a question. I have not been there. Was it a large number of people; or was it just one particular person?

Don Mazzeo: It was one in particular individual, but there was a large number of residents that were there that evening and among them, no one else came forward and said negative or positive, quite honestly.

Lynn Ekelund: And I seem to remember a murmur of agreement when that gentleman made that comment.

Don Mazzeo: Right.

Bob Heinrich: An abundance of lights, I think, is indicative of better security actually. I would rather have more light than less.

Bob Kerr: At the last Council Meeting there was a request; I guess it was made by the developer, to remove one light because of locations of some transformers and things and moving a light then ended up with one, essentially on almost each front property corner of a house and that really was too much. You could probably read all night in any room in the house.

Don Mazzeo: Any other comments from the Commission on this particular subject. Do we need legal input?

Seth Thompson: The way the Code reads, again, it only sets a maximum distance; so certainly they are within the Code in having less than 300'. The Commission could consider having some sort of floor to that distance perhaps; making a recommendation to Council to change the Code. If it's really a concern, you can kick it back to Council and say anything between 100' and 300'; something to that extent, but it obviously complies with the Code, because it's not above or beyond 300'.

Mark Quigley: If there's a cap, I think we should have a floor. I think if we're going to be moving forward and want a certain amount of consistency, we should at least provide ourselves with that type of direction.

Seth Thompson: It sounds like we could put it on the next agenda, if that's something that Council wants to discuss and then, at least at that point, the public can have... you might want to set it up so the public can have some input, so you get to balance the safety issue with the cost issue.

Barry Goodinson: With the minimum number of lights that would be required, how many lights are there actually planned?

Bob Kerr: I do not have an exact number; probably over half would be eliminated and on this portion, there are 16 lights, so they're as close as 120'

apart; so you could almost say that half of them might be eliminated.

Linda Edelin: This is Phase 3?

Bob Kerr: This is Phase 3, yes.

Linda Edelin: What about the earlier phases? Is it consistent with them?

Bob Kerr: The earlier phases also are closer than the Code requires. It's a little different in that part of the Phase 2A and B has a main boulevard and there were discussions with the former Mayor and Council, that maybe the main boulevard remain as is, but not quite as much light on some of the side streets, secondary streets. And they can be taken down at a later date, but obviously if you don't put them up, you don't have that expense either and the developer would pay for that.

Lynn Ekelund: Bob, when you're talking about the discussions with the prior Mayor and Council, what was the reasoning for the discussions?

Bob Kerr: I believe it was mostly the cost.

Lynn Ekelund: The cost?

Bob Kerr: Because, and correct me if I'm wrong Robin, or nod your head; they do pay per light. It's not an electric bill per usage; it's just a cost per light.

Lynn Ekelund: So this is something that when it came before Council, they discussed having lights closer to Code or against it, because of the cost?

Bob Kerr: I don't know that it actually came before Council; it was more discussions in the Town Hall with council members and the Mayor.

Lynn Ekelund: I was going to say, because I don't remember that at a Town Council meeting. I could be wrong, Robin. Do you remember that at a meeting?

Bob Kerr: I think it might have come up that... I think the Mayor might have said we're looking into it at a Council Meeting, but it wasn't discussed between council members at the meeting.

Lynn Ekelund: So there was no resolution to the discussion?

Robin Davis: That is correct. I think it was on the agenda. Mayor Newlands had put it on the agenda. There was some outcry from some of the residents; maybe some of the ones that were at the Planning and Zoning meeting about it being discussed. I think that's as far as it went. I think Mayor Newlands' idea was to maybe have DP&L, on the current lights that are out there, go out and just turn off every other one; for several months, just to see what it looked like. If there was still an outcry, or whatever, they could just turn them right back on.

Don Mazzeo: But that never occurred?

Robin Davis: That never occurred. After the one meeting, I think it got dropped.

Mark Quigley: I'm sure we're not the first community that's dealt with this. Is there a current Best Practice that looks at balancing safety and environmental responsibility and cost?

Bob Kerr: Some ordinances rather using a distance, use a minimum foot candles for that. If I may ask the developer's engineer, I don't know; did DP&L do the layout of this, or was it in house?

Mike Kobin, George, Miles and Buhr: You're taxing my memory a little bit.

Those were laid out at Master Planning stage and they've been carried through; I

believe that was done by Hallofane.

Bob Kerr: And that would be the lighting manufacturer?

Mike Kobin: Right and that would be done on foot candles.

Mark Quigley: Let me sell you lots of lamp lights.

Mike Kobin: They do it based on a foot candle standard; they actually plot the light pattern.

Bob Heinrich: Mr. Chairman, may I ask a question? Would it be appropriate to send this matter back to Mayor and Council for them to decide on it; rather than us sit here and discuss it? Because we don't know where we are on it.

Seth Thompson: The sub-division has to go to Council anyway. Frankly, Robin brings up a good point and it kind of ties into what we'll be talking about later, but as part of the Master Plan the lighting was approved at that phase. So, in effect, Council has already said that's going to be the lighting layout.

Bob Heinrich: Well then I think we're just beating a dead horse.

Don Mazzeo: Yes, we are. That was going to be one of my next questions.

Thank you, Robert, for bringing it up. This is already been an approved plan, as it was prepared, presented and signed off by Mayor and Council at whatever point in time that was.

Seth Thompson: Correct.

Don Mazzeo: The lighting plan was incorporated at that point in time.

Seth Thompson: Correct.

Mark Quigley: This raises a question that keeps on popping up, though. I'm not sure if it was sufficiently addressed last time. You've often said it was approved at the Master Plan stage and if approvals are made at the Master Plan stage, then I'm not sure of what the point of subsequent approvals are; and you said at 30,000'; it's a 30,000' look and now we're at a 10,000' look and I said that you see things better at 10,000' feet that you didn't see before. So I guess as the new guy, I think we need a little bit of direction on what the scope of approval is, on these subsequent approvals; because my assumption is a Master Plan is approved, contingent upon things making sense and being in compliance, as they get fleshed out and the design process continues. So I just need a little bit of direction on this.

Seth Thompson: I certainly appreciate that. I'll get into the buffer, specifically, when we get to that item; but as far as the lighting, part of the issue is that the Master Plan is really associated with your zoning, so not all sub-divisions have Master Plans, so for the ones that aren't, you would be the first people through looking at the lighting plan. There's a little bit of a duplicative nature having a Master Plan in your zoning ordinance, that requires the lighting to be laid out at that point, so that really has already been decided when it comes to these Master Plan communities; but if something is a regular residential sub-division, you guys would be the first ones to look at it. That's a source of confusion, I recognize and we'll get into it, obviously, with the buffering later on. Just know that that isn't always the case; it's only when it comes to these Master Plan LPD communities that the lighting has already been approved.

Barry Goodinson: I have a question, or a comment to that also. Part of the actual number of units; not number of units, but the units and the type of units has changed and shuffled around a little bit from what I understand from our last meeting. So even though it was approved, there might be additional changes that may coincide with the structure of the units and townhouses... No? That's not correct? Okay.

Seth Thompson: The Master Plan was revised; maybe that's what you're thinking.

Mike Kobin: The Master Plan itself was revised and there was some discussion about that at the last meeting; I think that's probably where the confusion has come in; but the plan that was submitted for Phase 4 is in exact conformance with the current approved Master Plan. There were no changes in units; no changes in the lots. That layout is exactly as it came through in the Master Plan.

Barry Goodinson: Okay, thanks.

Mark Quigley: Just related to that, if something is approved at the Master Plan stage; that's approved in error, if it's not in compliance or whatever; how is that corrected later on? What's the mechanism for correcting?

Seth Thompson: At the Planning and Zoning level?

Mark Quigley: Yes, so if someone comes in and a Master Plan is submitted and then approved and then subsequently problems are found in it, that weren't noticed at the Master Plan level; what's the mechanism for correcting that?

Seth Thompson: Well the initial element, the Master Plan initially goes to Planning and Zoning and then to Council, so Council kind of has a second bite at the apple if something was incorrect and Planning and Zoning missed it. Part of the issue is the theory of the Master Plan is actually supposed to give a little more latitude when it comes to your zoning, so again, kind of on the theory level, seemingly you can be a little bit out of compliance with what would otherwise apply, if you weren't in a Master Plan development; so it's hard to answer your question in the sense that somebody looking at it from the outside might say, well that was part of that slight deviation that they allow for Master Plan communities of the quiet nights and busy days type concept. The overlay represents... Unfortunately, it just represents challenges to you guys, that you wouldn't have in a more straightforward development or sub-division.

Bob Heinrich: Once again, since I think we've agree with beating a dead horse, would be appropriate to make a motion?

Don Mazzeo: It will in a moment, but I would like to hear Mr. Kerr.

Bob Kerr: I just wanted to add to what Seth was saying. There are certain gray areas that we do change in the preliminary and in the final. The Master Plan shows a lot of little lots and it specifies in the notes someplace what the minimum lot area is and a lot of details. When we get to the next step, it has the meets and bounds and it gives the actual square footage for each lot. Every once in awhile a minimum square footage of say 2,500 comes up 2,498 or something, so at that next step of the review, you've got to do something to that lot to get two more square feet, just because it was conceptually shown to be 2,500 square

feet and it was the thickness of the line that was the mistake; you've got to go back and change something like that. But the general overall concept of the sub-division isn't supposed to change from the Master Plan to the next steps and phases.

Mark Quigley: I understand the concept; it's the details that...

Don Mazzeo: The devil is in the details.

Mark Quigley: Exactly.

Bob Heinrich: It always is.

Don Mazzeo: Any other questions, comments, concerns regarding this particular final review and subsequent approval? Hearing none, I will accept a motion.

Bob Heinrich: I move that we approve the final sub-division plan.

Lynn Ekelund: Second.

Don Mazzeo: Roll call vote, please:

Mark Quigley	Yes
Barry Goodinson	Yes
Bob Heinrich	Yes
Lynn Ekelund	Yes
Linda Edelin	Yes
Don Mazzeo	Yes

Don Mazzeo: We have an approval for recommendation to Mayor and Council.

b. Preliminary Subdivision Plan Review/Approval

The applicant, Fernmoor Homes at Heritage Creek, is requesting a preliminary subdivision review/approval for Phase 4 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00.

Don Mazzeo: It's a good thing Fernmoor Homes is here. Do we have representation from Fernmoor Homes this evening?

Jim Fuqua, Attorney in Georgetown: I don't think I've ever appeared before you before, but I represent the applicant. As you know, this was continued from the last meeting when some questions came up and I got a call after that. I've done some things in connection with Heritage Creek. I wasn't involved in the original presentation or approval and there's been a bunch of interesting questions that have come up as I'm sitting there and I would like to explain a little bit. I think it addresses a question that Mr. Goodinson had about the Master Plan. I'm certainly not meaning to lecture you, but I'm repeating what I've learned from reading your Ordinances and things. I'll defer to Seth, as far as the truth. Again, this is an application for the preliminary approval for Phase 4. You're all familiar with the Heritage Creek development and as Mike said, this section is identical to what is on the approved Master Plan; there are no changes. It's basically exactly that. When this phase is submitted, there is detailed construction design information that's submitted about water, sewer, lighting, stormwater

management, the roads; things of that nature. Obviously Mr. Kerr reviews that. This phase contains a total of 42 units, again it's a mixture of single family and multi-family triplexes. The reason there is a Master Plan, is that this is not a standard sub-division. I suspect the majority of what the Commission would see would be regular sub-divisions, but Milton does have a provision in their zoning ordinance, what Milton calls the Large Parcel Development District, or LPD. In Sussex County, it's called a Residential Planned Community, an RPC. There's different names for it, but most zoning ordinances have it and the intent of that LPD District is basically to provide for larger developments, to provide some design ingenuity; not to just have cookie-cutter type sub-divisions and things of that nature and the Milton Ordinance basically encourages the LPD to have the feel and the style of Milton; to have a diversity of housing types and to have a neighborhood feel to it; that seems to be the intent of it. Under the zoning ordinance, when a developer seeks this type of a development, they submit a Master Plan to the Planning Commission, who review it. It then goes to the Town Council. The Town Council reviews it in conformity with the Comprehensive Plan and just for conformity with good land use planning and some of the things you folks deal with all the time. When that preliminary Master Plan is approved by the Town Council, it is sent back to the Commission; the developer, the applicant, prepares a final Master Plan, which is then reviewed by the Planning and Zoning Commission and if that complies with all the conditions and requirements that the Council and the Planning and Zoning Commission have placed on it, then it receives final record plan approval and then it's recorded. So that's exactly what happened in the case of Heritage Creek. It went through that whole process and as I stated in my letter of May 2nd to Mr. Mazzeo, which you gentlemen and ladies may have copies of, this original Master Plan was actually reviewed back in 2005; that's when it was approved. The overall development contains 425 units. There was a revision to that Master Plan, which was mentioned, which came before the Planning and Zoning Commission last year, back in November and that was approved by the Planning and Zoning Commission and then it went to Council and it was approved by the Council on January 7th of this year. Again, as the ordinance requires, it came back to the Planning and Zoning Commission, received final approval from the Planning and Zoning Commission on January 15th and actually was recorded on January 31st down at the Recorder of Deeds Office in Georgetown. So the Phase 4 Preliminary Plan, as I said, is just a section of that Master Plan that's already been approved. There are no changes or anything else and it basically has all that required detail work that I referred to that Mr. Kerr would normally review. I did mention in my letter that all of the wetlands that are part of Heritage Creek, are going to be placed in a conservation easement and what that means is that they will be permanently preserved. There can be no encroachment and if you know anything about wetlands, you really can't disturb wetlands anyway, by Federal Law, you really can't. But this is a permanent easement that basically makes that a restrictive covenant that it can't be disturbed, it can't be cut. It has to remain in

a natural state. So that's going to be done and then also I think the record will show that you received a letter from Tim Willard. Tim owns the piece on the other side of the wetlands. I call it his man farm, because he has a little building/garage out there and takes his kids out there and he's doing something's like that out there; and he obviously just wanted to make sure that he was going to maintain that buffer between him and that will remain there.

Barry Goodinson: I think the question that arose last month that we didn't have information about, we had questioned about what was the required setback and we were told that it might be 50'; or the Code might be silent. So what we were doing was putting it off until we had real information. Now I've looked around and I spoke to the County and they say it's 50' and apparently the Town Charter says it's 50'.

Don Mazzeo: It follows the County regulations.

Barry Goodinson: Your letter was silent on the 50' and the fact that this encroaches within the 50', that was the piece that...

Jim Fuqua: This is an important distinction. There is no 50' buffer from Federal wetlands in the County Code. It's a 50' buffer from tidal wetlands. In fact, there is no buffer from any, what they call Federal wetlands; it's under Section 404 of the Federal Act. There is no requirement for buffers. The Ordinance provides that you can't disturb the wetlands, but there are no required buffers. The State of Delaware, DNREC has dealt with this over the years. There's been committee's, I've attended some committee meetings where they've kicked this around. DNREC would like to create buffers, but it's never been implemented and in fact, I just heard recently there's discussions again about setting up a committee to explore the wetland buffer question. But the County, it's only a tidal wetlands county, from tidal wetlands, rivers, things of that nature and the bay. So there are not Federal wetland buffers; under the State, or County, or Milton Ordinance. In this case, there is a buffer from the wetlands to these lots. It varies in size and distance. That area between the wetland and here is common space. It's not part of somebody's lot. Through a portion of it, there is a little walking trail that will be created. I don't think anything is there yet because this area hasn't been developed; but there would be a walking trail through there and that area would be maintained, in appearance, as opposed to the wetlands, which will remain undisturbed and that's basically how it's being dealt with here.

Seth Thompson: I'll follow up on that, if I may, because obviously the Commission charged that I go back through and double-check and make sure we're doing everything correctly and just to follow upon what Jim said; at one point there were DNREC regulations, but the Superior Court ruled that they didn't have the authority to adopt those and I think that case was from 2011; so only the County has the ability to adopt those and the County has chosen to limit those to tidal. In terms of the town's ordinances, I knew Robin and I had discussed a 50' buffer; it's only for parcels adjoining agricultural preservation and the old cannon of construction is that if you include one item, you're excluding all others, so basically the Town Code is, there's a 50' buffer if you're

adjoining agricultural preservation. If you're not adjoining agricultural preservation, there's not a 50' buffer. So that's the short answer from the Town's perspective.

Jim Fuqua: If I could add and I'm not necessarily saying a buffer from _____ wetlands is a bad thing; that's for the Town or whoever has the authority to decide that, but if you do want a buffer, then that should be an Ordinance that's created so everyone understands that's how you have to design things. In this particular case, obviously since it was a Master Plan approved, it didn't require anything like that. It would be unfair to the applicant to put something on it now, because it would change the layout of the Master Plan and there's been a lot of engineering and things of that nature done, that would be unfair. And then, also, like I said. It should be an Ordinance. It's not something that can just be arbitrarily placed here, maybe not placed there; things of that nature. If it's to be something required, then everyone should be aware of it and everyone should have it imposed on them.

Seth Thompson: And just to piggy back on that, I went through again, let's take it out of the context of a Master Plan. If this were just an original sub-division, where there was no Master Plan, your sub-division ordinance allows for the Commission to consider preservation of natural resources "whenever possible". I can tell you that isn't a 50' buffer. If the Town wanted a 50' buffer for everything, they really need to put it in the Ordinance, but Mr. Fuqua's right, that we're dealing with a Master Plan and it's kind of like what I mentioned on the prior application, where some of the work that you would typically do at the sub-division phase has really already been done, including figuring out the appropriate boundaries and I pulled the section from your zoning and it references appropriate relationship of proposed uses and existing uses at boundaries; so really those considerations would have occurred at the Master Plan level. We do consider buffering when it comes to our site plans, but the way your Code reads, that's really trees or some sort of ground cover; that's not a distance that's left in it's natural state.

Jim Fuqua: And again, if it's any consolation, I just wanted to point out, when the Master Plan was revised earlier this year, one of the things that was done is this road here was changed from a boulevard to a regular road, so it was made not as wide; so when that was done, these lots were pulled up to the road and what you see in here in this pink color, that area was in those lots before and with pulling them up, that's now all open space, so you can see all these lots actually were further removed from the wetlands then they were originally approved. So to some extent, that buffer actually exists and has been increased, so the spirit of what you're talking about, really, has been accomplished.

Don Mazzeo: Our biggest concern was the fact that we had no way of having a guarantee that the resident/owner eventually would do nothing on that space and in this letter and obviously it's on letterhead and it's signed and sealed, but I'll read it into the record because it's addressed to me. It says "The developer will place all wetlands as designated on the Master Plan, including wetlands, shown

on Phase 4 plan, in a conservation easement providing permanent, non-disturbance of those areas.” I think the gist of what we were looking for was that we didn't want that area to be disturbed. I believe this letter gives us some certainty that that will not be disturbed back there.

Barry Goodinson: What's the timing and mechanism of that? How is that accomplished and how can we make sure that it actually does take place?

Don Mazzeo: Well that would probably go through...

Bob Heinrich: Would that be the Homeowner's Association actually?

Seth Thompson: It might have already been recorded. Did you record it on the Master Plan?

Jim Fuqua: I don't think so. It's no problem. That can be taken care of in the near future.

Don Mazzeo: So as each lot is actually transferred to it's ultimate owner, there will be something that they recognize that they cannot do anything beyond their border.

Jim Fuqua: What will happen is, well of course they only own to their lot lines.

Don Mazzeo: As we all understand that to be the law; but the practicality is that many folks don't recognize that oh gosh, there's something behind me, there's nothing behind me, I'm going to fill it in a little bit. What's going to prevent that from happening?

Jim Fuqua: Practicality is at the rear of those lots, there's a place where common, open space exists.

Don Mazzeo: And that's where the pathway, I believe, is supposed to go.

Jim Fuqua: Correct and that is maintained by the Homeowner's Association, the developer, at this point.

Don Mazzeo: Right.

Jim Fuqua: Eventually by the Homeowner's Association and then to the rear of that, there's going to be a line where the natural growth takes over. That would be where the wetlands are. Now from a practical point-of-view and you all know this, if you want to see ticks and chiggers, you just go near those wetlands. It's just something... You don't want to go in there. You're going to have a maintained area at the rear of the lot, the Homeowner's Association in the future, the developer now, if someone was putting sheds or things like that to the rear, over their lot line, number one it would be a violation of your Ordinance, of course, because it wouldn't meet setback requirements, but it would also be an encroachment into the common areas and the Homeowner's Association would take action on that.

Bob Heinrich: Are there penalties or fines for a resident using those designated areas for their own personal use; let's say they want to plant a garden or take out some of the things that are growing there, despite that they're not on their property? Would there be something in the Homeowner's Association, or the developer's regulations that would enforce the fine or penalty?

Jim Fuqua: I can't tell you that I'm specifically aware of these restrictions here, but normal restrictions would have provisions that the common areas are for the

general use and enjoyment of all owners in the development.

Bob Heinrich: It seems to me that if the residents knew there was going to be a fine for them encroaching upon areas they shouldn't be, that that would have a chilling affect for them.

Jim Fuqua: As you know, this area hasn't been developed yet, so it's not anything you can really see yet; but those distinctions will be made. It's really no different with most sub-divisions or other developments, as you know they have common areas and they're really honored for the most part. I'm not aware of problems that really occur in there.

Barry Goodinson: I'm not sure if my question was really answered, though, about in terms of the legal mechanism to make sure this happens.

Jim Fuqua: The conservation easement?

Barry Goodinson: Yes, because I've heard several people talking about different instances around town and they'll say well, the deed was not recorded properly and then we're sort of stuck with the problem forever. I want to make sure that this gets recorded properly and we're not stuck with a problem forever.

Seth Thompson: I think typically what you'll see, is in the dedication of restrictive covenants, they'll refer to the common areas and then there might be a penalty; some Homeowner's Associations put in there that a violation is a \$75 fine, for each incident. That's not always the case, but some Homeowner's Associations do it that way; but if it's going to be an easement, it will be recorded at the Recorder of Deeds Office. We're at the preliminary phase, you can make it a condition that it be recorded by the time they come back for final.

Barry Goodinson: That's what I'd like to see.

Jim Fuqua: I think what we'll probably do is do a conservation easement that would cover all of the wetlands, rather than section by section. We would just place it on the entire thing and that's something that we should be able to do that now.

Barry Goodinson: So where can we build that in?

Don Mazzeo: Now.

Barry Goodinson: I'd like to make sure that happens; before anything else happens.

Don Mazzeo: It's a condition of...

Jim Fuqua: The preliminary approval?

Don Mazzeo: The preliminary approval.

Barry Goodinson: Okay, great.

Seth Thompson: Just like when they come back with their agency approvals, they're going to come back with a copy of their Deed that's been recorded and stamped at the Recorder of Deeds.

Barry Goodinson: Perfect.

Don Mazzeo: Okay, any other questions, comments concerning this application as it's been presented a second time to us? Mr. Kerr, was there any other engineering aspects that needed to be addressed; that have not been addressed from your letter?

Bob Kerr: I believe we talked about all of them last time. I'm not sure of what the outcome was with all of them.

Lynn Ekelund: I wasn't here the last time, but there was something and I'm looking for it about this trail; that it was a 7' trail and then again, with easements. Somebody was talking about expanding that 7' to either a 10' or a 15' easement. I don't know where it is, so I can't touch it, but do you know.

Don Mazzeo: It was Article 7 of Mr. Kerr's letter.

Lynn Ekelund: Okay. Are you prepared to discuss that?

Bob Kerr: I have to see where we are. Item No. 6 was an area between lots 240 and 241, that appeared to be about 7' wide, with a 5' walkway. I think we discussed that that would be large enough, but Mike was going to give additional easement on each side in case it needed to get something bigger in.

Mike Kobin: Yes, that's correct.

Don Mazzeo: So that would be another condition.

Lynn Ekelund: And that would be another condition?

Don Mazzeo: Absolutely.

Lynn Ekelund: Okay.

Don Mazzeo: Mr. Solicitor, do you have that?

Seth Thompson: Yes.

Don Mazzeo: Thank you.

Mike Kobin: There were no issues with any of Mr. Kerr's comments; we concurred those will be taken care of on the final.

Bob Heinrich: I don't see anything here that's unresolved.

Don Mazzeo: No, there is none.

Lynn Ekelund: I have another question. Again, I wasn't here and this goes back to another comment that Mr. Willard made and again, speaking in his private capacity, not as your partner; but as a homeowner. He said that he thought it would be wise to require that the developer notify their purchasers of that fact; the fact being that there was hunting going on. Does anyone have any feeling, one way or another there?

Jim Fuqua: That's no problem. Lots of times in restrictions, there's kind of a standard agricultural use restriction that's placed in...

Lynn Ekelund: That's what I was thinking.

Jim Fuqua: And sometimes hunting occurs in the area and things of that nature, but that shouldn't be any problem. That could be added.

Lynn Ekelund: So that's something that you would be willing to add, as well.

Jim Fuqua: That's fine.

Don Mazzeo: You have no problem putting that in as part of the conditions of approval.

Jim Fuqua: No that's fine.

Lynn Ekelund: Okay, just...

Bob Kerr: Would that be something to have as a Note on the Record Plan?

Lynn Ekelund: I think that, yes.

Don Mazzeo: I could see that.

Jim Fuqua: I don't have any problem with that.

Lynn Ekelund: That's all I have.

Jim Fuqua: Although I would advise Mr. Willard to be careful where he hunts.

Don Mazzeo: You have to be careful everywhere. Okay, any other questions, comments, concerns regarding this application? Hearing none, I'll accept a motion.

Seth Thompson: Mr. Chair, I think our conditions are the easement referenced on the two lots we discussed and a copy of the Recorded Easement regarding the preservation that was discussed, as well as in the Declaration, a reference to hunting in the area, as well as a Note on the Record Plan.

Lynn Ekelund: With those three conditions, I'd like to make a motion that we approve the preliminary sub-division plan for Phase 4 of Heritage Creek.

Bob Heinrich: Second.

Don Mazzeo: Roll call vote, please:

Mark Quigley	Yes
Barry Goodinson	Yes
Bob Heinrich	Yes
Lynn Ekelund	Yes
Linda Edelin	Yes
Don Mazzeo	Yes

Don Mazzeo: Motion is approved, preliminary sub-division plan for Heritage Creek, Phase 4, is approved. I have nothing else on our agenda this evening, except for number 7, which is adjournment.

7. Adjournment

Don Mazzeo: Do I have a motion to adjourn?

Lynn Ekelund: Move to adjourn.

Don Mazzeo: All in favor say aye. Opposed. Motion carried. Meeting is adjourned at 7:16 p.m.